

COPYRIGHT & THE INTERNET

Q & A

Copyright and Technology in General

Q1 Why should we care about protecting Disney's or anyone else's copyrights on the Internet? Wouldn't we be better off if there was no copyright protection and we could get anything we wanted for free?

A *You might be – for awhile. But the reality is that soon there wouldn't be many works worth having. Copyright law – grounded in the Constitution – grants certain rights to creators (the right to reproduce, distribute, adapt, publicly perform and publicly display their works) to encourage them to produce entertainment, educational and cultural works of lasting benefit to the nation and the world. Without this economic incentive that copyright protection gives creators, many works that require the expenditure of an incredible amount of resources would not be created. And the loser would be the public.*

Q2 Technology will make it possible for the consumer to hear any sound recording instantly upon demand or view any movie or television program anytime, anywhere. Why are you against these great innovations that consumers want?

A2 *We want consumers to get our products faster and easier. And we're working on that every day. The question is not whether works will be made available through the Internet – it is a question of who has the right to do it – people who create the works or people who steal them. We are embracing the Digital Age, but there needs to continue to be appropriate safeguards to restrain piracy and ensure that consumers have the wide variety of quality works available to them that they desire and deserve.*

Technology and the Internet are making more things possible and most things easier and faster. By and large, technology is good. Using that technology to steal is bad. The same technology that affords great benefits also permits theft and unauthorized distribution of our products around the world with just a few keystrokes and the click of a mouse (and I'm not talking Mickey here). The uploading of just one copy of a copyrighted work onto a website can have devastating effects on – or even destroy – the market for the work. Who will want to make the investment necessary to create the types of works you've seen today if that risk is a reality?

Attorney Client/Work Product
Outside Counsel's Eyes Only



D-10001

Television Signal Streaming over the Internet

Q3 You recently sued iCraveTV and got a court order restraining it from retransmitting your television programming into the United States through the Internet. Why should it matter whether someone watches your programming on his computer screen or turns his head and watches it on his television screen?

A3 While the screens may look similar, the effect of someone transmitting our programming over the Internet is very different. The iCraveTV case shows how people can try to make money off the backs of copyright owners and deprive them of the benefits and control of their works.

[NOTE: iCraveTV.com was streaming 17 over-the-air television stations from Canada and the U.S. on the Internet without the consent of or compensation to the owners of the programming. The court issued an injunction that ordered iCraveTV to stop retransmitting the television programming. The parties settled the suit, so there will not be a trial (the issuance of a permanent injunction was part of the settlement). Under the settlement, however, the defendant MIGHT be able to get back into the business of retransmitting television programming some day IF the law in Canada is clarified to allow his activity AND technologically he can effectively keep people in the U.S. from receiving the transmissions AND he can convince the U.S. court that issued the injunction that he can get back into the business without the transmissions reaching the U.S. (and violating U.S. law).]

Television programming is licensed territorially. The value of the programming to the television stations around the country – and the world – that bought the exclusive right to broadcast it in their areas was greatly diminished when this Internet company – without paying a dime – made the same programming (wrapped in its own advertisements) available worldwide to anyone with a computer and a modem. And if television stations won't pay for programming that can be ripped off by an Internet webcaster for free, then quality programming won't get made.

- Q4** Why should Internet retransmitters of television programming be treated differently than cable and satellite retransmitters, both of whom have the benefit of compulsory licenses under the Copyright Act? Why should it matter what "appliance" the viewer is using?
- A4** *Under the current Copyright Act, cable and satellite companies may obtain a compulsory license that permits them to retransmit broadcast programs without the specific consent of copyright owners. Some Internet service providers have argued that they need a compulsory license to achieve a "level playing field" with these "competitors." However, while cable and satellite companies may be eligible for compulsory licenses, they must also comply with a multitude of regulatory provisions -- including retransmission consent, "must carry" of local stations, syndicated and sports program exclusivity blackouts, and network program non-duplication rules -- that do not currently apply to Internet retransmitters.*

Moreover, cable companies serve a designated geographic location within the United States -- and the compulsory license only authorizes retransmission within that area. Retransmission by an Internet service, on the other hand, could cover the world. Because the Internet is inherently global, the retransmission of television programming by an online service based in New York is equally accessible to Internet user not only in New York, but also in New Brunswick, in New Zealand, in New Caledonia and anywhere else the Internet reaches. And what is delivered to each user is not just a performance that can be watched once or a few times on videotape, but a digital transmission that can be downloaded, copied and disseminated without limits -- with the millionth copy as perfect as the first.

By taking away a creator's right to control when and how his work is made available to the public, compulsory licenses violate central principles of capitalism and upset the free marketplace. The answer is not to grant yet another compulsory license that would heap a host of regulations on the Internet and choke the online programming market, but rather to get rid of the compulsory licenses that we have now, which are no longer necessary or appropriate.

Music on the Internet

Q5 Recently, the Recording Industry Association of America (RIAA) sued MP3 over an online service called Napster. What was wrong with what MP3 was doing? Why can't consumers share the music they buy?

A5 *For some time now, the technology known as MP3 has allowed the compression of music into files that are small enough for quick transmission over the Internet. Using this technology, computer users have converted their CDs into MP3 files and shared it with their friends. Some of this activity would likely be considered fair use or legal under the provisions of the Audio Home Recording Act. As I understand it, Napster made it possible for everyone to share all of their CDs with everyone else. Users typed in the names of the recordings they wanted and Napster searched for them and provided links to people who had uploaded MP3 files of those recordings. Users could then copy any and all of those files, instead of purchasing the CDs. It has been described as a "pirates' cooperative."*

Users of the service argue that the music industry just needs to face reality and realize that it can't control use of its recordings on the Internet and "deal with it." But if none of the people who created the music are compensated, eventually they will eventually no longer be able to – or want to – produce and offer to the public the music everyone wants. With Napster, theoretically – or, perhaps, literally – only one copy of a CD need be bought . . . ever. That one purchaser could then convert it into an MP3 file and share it online with everyone else around the world who wanted a copy. Under that scenario, record companies would have only two choices – charge millions of dollar for that one copy sold (so that they could pay the singers, musicians, producers, mixers, etc. and finance the creation of the next recording) or get out of the music business. While I do believe that all of us in the entertainment industry need to continually adapt to the digital world and explore new business models, widespread piracy of our products on the Internet will mean there will be no "business" to adapt.

Technological Protection of Copyrighted Works

Q6 Disney and other movie studios just sued (and won an injunction against) two people who provided the code to unlock the technological protection (security) measures movie companies use to protect DVDs (DeCSS). Why should copyright owners be allowed to "lock up" their works so that only people who pay can see or hear them?

A6 *Technological protection measures are, unfortunately, necessary today where the millionth copy of a digital video recording is as good as the master. And we need to prevent the distribution of high-tech burglar's tools. If we are going to be able to create the digital-format products people want and, soon, make them available online, then technological protection measures -- and laws against the distribution of means to defeat them -- are necessary.*

The necessary laws are in place and effective security measures to keep the pirates in check are being developed. But laws and security codes can -- and will be -- broken. And we know that. But we also know that if the public understands the importance of copyright and if they are aware that it is the reason there is such a bounty of creative works available to them every time they turn on their television sets or go to the movie theater or visit their favorite website, then the laws and the security measures will be respected.

We are at a crossroads right now. Children today are starting to grow up in an online environment where the perception is that copies of everything are -- and should be -- free on the Internet. Teenagers make fun of their peers for wasting their money by buying CDs, because they can download anything they want from the Net for nothing.

It is technically possible for each and every person with a computer and modem to illegally download thousands of sound recordings. No one need ever buy another CD. But just because people are able to break the law, doesn't mean that people will. By and large, they won't -- IF they know that it is stealing.

Most people would not go into Tower Records and shoplift a CD -- even if no one was looking and the chances of being caught were negligible. Once people understand that downloading pirated copies of sound recordings, books and movies from the Internet is the same as sticking a videocassette under their shirt and walking out of Blockbuster without paying for it, most people won't do it. They understand that it is wrong, that it drives up the cost of legitimate purchases and that -- if left unchecked -- it will diminish the quality and number of movies and records and books available to them.

Q7 Why should people be prohibited from circumventing technological protection if they aren't going to infringe the copyright in the work?

A7 *Would it be OK with you if people broke into your house, as long as they didn't steal anything while they were in there? Should the law allow them to do that as long as while they were in there they just looked around and used your stuff, but then also left the door open for anyone else that might come along (who might not have such benign intentions)? If the law were changed to require a bad intent – for trespassing or breaking and entering or for providing the tools to do so – it would not provide the adequate legal protection and effective remedies required by the WIPO treaties that the U.S. has agreed to adhere to (and that will come into force when a total of 30 countries join). Nor would it make the Internet a safe enough place for copyright owners to offer their products.*

Q8 But by restricting someone's ability to gain access to a copyrighted work or to copy it, aren't you killing "fair use" under the Copyright Act and inhibiting an important educational activity?

A8 *First, let me say that we are always ready and willing to talk to educators and librarians about how legitimate fair use of small portions of our movies might be made for research or educational purposes. And copies of our movies, television programs and other works are fully available and accessible in a variety of formats now and we will continue to be so. But if there comes a day – years from now (IF it ever even comes about) -- when "fair usable" copies of our works are not available and the security measures we need to use to prevent piracy on the Internet end up also preventing important educational or other activity in the future, we will work with the educational and library communities to find a solution.*

Technological Protection of Copyrighted Works

Q9 ABC and other broadcasters are in a dispute with the record industry over whether the performance right given to sound recordings covers the performance that occurs when a broadcaster streams its own over-the-wire broadcast over the Internet. Can you comment on this?

A9 *Broadcasters and the record industry have a difference of opinion over the correct interpretation of the law and it will soon be decided by the courts.*